

Chapter 29.02. Board Of Adjustment.¹

29.02.010. Board Membership.

The Board of Adjustment shall consist of five members and whatever number of alternate members that the Mayor considers appropriate, each to be appointed by the Mayor for the term of five years, provided that the term of one member shall expire each year. Any member or alternate member may be removed for cause by the appointing authority upon written charges and after a public hearing if such public hearing is requested. Vacancy shall be filled for the unexpired term of any member or alternate member whose term becomes vacant. One member, but not more than one of the Planning Commission, shall be a member of the Board of Adjustment.

29.02.020. Organization and Meetings of Board.

A. The Board shall adopt bylaws for the regulation of its procedure and the conduct of its duties not inconsistent with the provisions of this title or of the Utah Code. Such bylaws, to become effective, shall first be approved by the City Council.

B. Decisions of the Board shall become effective at the meeting in which the decision is made, unless a different time is designated in the Board's rules.

29.02.030. Duties and Powers of the Board.

The Board of Adjustment shall have the following powers:

A. Appeals – Hear and decide appeals from any order, requirement, determination or decision of the Planning Commission and/or Zoning Administrator's application of the zoning ordinance. An appeal may not be used to waive or modify the terms or requirements of the zoning ordinance.

B. Special Exceptions – Hear and decide special exceptions to the terms of the zoning ordinance where the City Council has granted jurisdiction to the Board to do so. The Board may hear and decide special exceptions only if authorized to do so by the zoning ordinance and based only upon the standards contained in the zoning ordinance.

C. Variances – Hear and decide all applications for variance from the terms of the zoning ordinance other than allowing a use variance. Such decisions shall be made in accordance with State law, Section 29.02.060 of this Chapter, and the rules adopted by the Board.

D. Nonconforming Use – Hear and make determinations regarding the existence, expansion, or modification of nonconforming uses.

29.02.040. Zoning Administrator's Determinations.

The Zoning Administrator may decide certain matters as designated by the Board, and consistent with guidelines established by this Chapter, the Utah Code, and the rules adopted by the Board. Pursuant to this authority, the Zoning Administrator may decide all cases which are routine in nature, uncontested, do not impact on the character of the neighborhood, are primarily brought about by recent changes in the Zoning Ordinance creating a large number of nonconforming structures or uses, and which the Board has granted on an almost routine basis. The specific types of decisions the Zoning Administrator is authorized to make shall include:

A. Determination of a nonconforming use which can be verified by substantial evidence. Substantial evidence, for the purpose of this Section, shall mean official documents, including any written correspondence, receipts, permits, or documents issued by a public body or agency thereof, etc., that may establish the truth of the matter asserted by the applicant.

B. Consider additions or alterations to existing buildings and structures which are nonconforming as to height, area, or yard regulations provided the addition follows the existing wall lines and no additional dwelling units are added to the building or structure.

C. Change in status of a nonconforming use to an equally intensive or a less intense use than that immediately preceding the proposed use.

D. Final review and approval on plans where the Board has required that a final plan be submitted for special approval, showing that all the requirements imposed by the Board in granting the original approval have been complied with. All decisions of the Zoning Administrator made under this section may be appealed to the Board.

¹ This entire Chapter was amended with Ordinance No. 01-42, dated 11/15/01

29.02.050. Appeals to the Board of Adjustment.

Appeals may be made to the Board of Adjustment by the City, the applicant, or any other person or entity adversely affected by a zoning decision administering or interpreting a zoning ordinance. All appeals shall be made as follows:

A. The appeal shall be made within ~~ten days~~ 30 days of the action or decision being appealed from by filing a notice of appeal with the Board of Adjustment with the ~~Planning and Zoning Department~~. *Community Development Department*.²

B. The notice of appeal shall specify the grounds for the appeal and circumstances related thereto. The notice shall allege that there was error in the order, requirement, decision, or determination made by an official or officials in the administration or interpretation of the zoning ordinance. A notice failing to allege such error or specifying the grounds for appeal may be summarily dismissed by the Board of Adjustment with or without prejudice. Response to the above requirements shall be set forth in detail in the notice of appeal. The person or entity making the appeal shall have the burden of proving that an error has been made.

C. All papers constituting the record upon which the action appealed from was made shall be transmitted to the Board of Adjustment.

D. The Board of Adjustment shall set the appeal for hearing to be held within a reasonable time from the date the appeal is received. Written notice of the date set for hearing the appeal shall be mailed to the applicant at least seven days before the appeal hearing date. After hearing the appeal, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer or body from which the appeal is made.

E. The filing of an appeal shall stay all proceedings and actions in furtherance of the matter appealed, pending a decision of the Board of Adjustment. Said stay shall exist unless the Planning Commission or Zoning Administrator certifies to the Board of Adjustment, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, the stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the District Court on application, notice, and due cause shown.

F. The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, planning commission, or agency, or to decide in favor of the appellant.

G. The City, or any person adversely affected by any decision of the Board, may petition the district court for a review of the decision, provided the petition is filed with the Court within 30 days after the Board's decision is final. In the petition, the appealing party may only allege that the Board's decision was arbitrary, capricious, or illegal. The Board may, after finding that it is in the best interest of the City to do so, stay its decision pending district court review.

29.02.060. Variances.

A. Definitions. A variance is a device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape, or topographical conditions of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to reduce financial difficulties.

B. Variance Criteria. Unless otherwise provided in this Title, the Board may grant a variance from the requirements of any provision of the zoning ordinance to the extent that such a grant shall be consistent with the provisions of this Section. Notwithstanding, the spirit of this Title must be observed and substantial justice done. Further, a previous variance can never set a precedent. Each case must be considered only on its individual merits.

1. The Board may grant a variance only if:
 - a. literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance; and
 - b. there are special circumstances attached to the property that do not generally apply to other properties in the same zoning district; and
 - c. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district; and
 - d. the granting of the variance will not substantially affect the general plan and will not be

² Ordinance No. 04-14, dated 5/20/04.

contrary to the public interest; and

e. the spirit of the zoning ordinance is observed and substantial justice done.

2. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Board may not find an unreasonable hardship unless the alleged hardship:

a. is located on or associated with the property for which the variance is sought; and

b. comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

3. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Board may not find unreasonable hardship if the hardship is self-imposed or economic.

4. In determining whether or not there are special circumstances attached to the property under this section, the Board may find that special circumstances exist only if the special circumstances:

a. relate to the hardship complained of; and

b. deprive the property of privileges granted to other properties in the same district.

5. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

6. Variances, once granted, shall run with the land.

7. Use variances may not be granted by the Board nor by any other body.

8. In granting a variance, the Board may impose additional requirements on the applicant that will:

a. mitigate any harmful effects of the variance; or

b. serve the same or similar purpose of the standard or requirement that is waived or modified.